

TO: MARYLAND COMMISSION ON THE DEATH PENALTY
FROM: CLARE HOGENAUER

I am a New Yorker, but I am not here as a New Yorker.

I am a criminal defense attorney, but I am not here as a criminal defense attorney.

I am here as a human being who has despised the death penalty as barbaric and uncivilized since I first understood the concept, 1953.

I have not been practising criminal law for years because of an incurable bone marrow cancer.

I have a compassionate connection with the death penalty as I view myself as on "death row" and the prisoners on death row.

The difference is that a "higher being" will determine when I die; human beings will determine when they die.

Fluid gives life as well as takes it. This tube feeding bag gives life. As I speak, envision the dripping as representing the fluid injected in inmates in a lethal injection execution. My minutes of speaking will match the time it takes to murder a human being in the death chambers.

In 1953, I was about to have my seventh birthday on June 15. Another six-year old had a special day that week too. His parents, the Rosenbergs, were about to be executed in Sing-Sing, a few miles upriver from my home in the Bronx. My parents, highly educated, had newspapers; we had television. It was my first exposure to this despicable practice.

I am pleased and fortunate to coincidentally have with me a summary of the testimony in New York of the commissioner of corrections in New York who was at Sing Sing for 20 executions including the Rosenbergs. It is a strong anti-death penalty statement from someone who saw it upfront.

I expect that I have spoken against the death penalty farther back than anyone else in nearly all the hearings throughout the country. In 1962, in my Bronx high school, I presented a paper in history class against the death penalty; Eddie Lee Mays was about to be the last execution in New York in 1963. I used a visual image then, too. I flipped the light switch after a passionate speech, to mimic electrocution.

I graduated Vassar and Fordham Law and began my primarily criminal defense career in 1975.

That year, I was nearly murdered in my apartment building. The way I related to him saved my life. I was kind, not hostile. The man I identified was not arrested because I was only 95% sure from the photos. That man went on to commit murders and was sentenced to life in Dannemora. Had he faced execution on those murders I would have actively opposed it, despite the fact that not a week passes as I enter my Manhattan co-op that I do not remember that night.

I co-counseled homicides in the 1970's and 1980's. With one co-counsel, we got seven out of seven acquittals. Murder is not as black and white as most people think: was a death by self-defense or murder? Very nuancy. Was the death caused by a hit on the head or by an overdose of crack? Only a higher being knows for sure. A driver brings a person who commits murder: accomplice or innocent participant?

My involvement with the death penalty more recently began in 2003 after I took care of my mother 24/7 for five years until her death and when I retired from practice.

I attended the play the Exonerated in the Village. The real exonerees were on stage the night I attended. Sunny Jacobs' husband's body had gone up in flames in Florida helping to end electrocution. So we could switch to a more "humane" method: lethal injection. Humane execution; what an oxymoron!

I have attended all seven death penalty trials in the federal cases in Brooklyn.

I have attended seven execution vigils in CT, CA, TN, VA, NC and Texas. I assisted at various levels in trying to prevent the executions. My greatest involvement was with Michael Ross in Connecticut in 2005. I lobbied the governor, spoke with his lawyer, attended 35 hours of competency hearings, attended his near execution vigil (it was postponed with one hour left!), and his actual execution vigil in May of 2005. The acts he had committed were savage; but so is the death penalty.

I attend execution vigils to assist me in speaking from my soul, not just my heart and brain. If you have the opportunity to attend one (Virginia is geographically very close to do so), please do.

I have spoken with 3,500 schoolchildren throughout the country.

I am now coming to my personal message against the death penalty, although my main point is that it is barbaric and does not belong anywhere in the world. It is the most cold, calculated, planned murder. Many murders occur in a matter of minutes. The death penalty costs millions and takes decades!

I am here to speak on behalf of the unspoken for victims. The person being executed and his or her family and friends are obvious. Here are the less obvious victims who to some extent will be haunted and traumatized for a lifetime: judges, law secretaries, court officers, court reporters, defense attorneys, prosecutors, paralegals, secretaries, mitigation specialists, journalists, photographers, police, witnesses, jurors, legislators, governors, prison staff, wardens, chaplains, kitchen staff, other inmates, executioners, etc. and all their staff, families and friends.

I have held in my arms federal court judges presiding over these New York federal cases, the defense attorney whose client was sentenced to death in New York last year who cried at the sentencing, a prosecutor whom I urged not to seek the death penalty any more (she has since become a judge.)

The most emotional experience for me was holding in my arms the man who had executed more than 60 inmates in Virginia and South Carolina and who was at Fordham Law School last year. He had a religious transformation and was now against the death penalty: better late than never.

The death penalty has been eliminated in most of the civilized world. Please join the civilized world and grant my dying wish and eliminate the death penalty.

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